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EXAMINER

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3623

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/796,367
Filing Date: March 09, 2004
Appellant(s): RACKHAM, GUY J.

Guy J. Rackham
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 11, 2009 appealing from the Office action mailed December 31, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 1-21 and 23-25 were cancelled in the amendment filed 09/30/2008.

Claim 22 is pending in the present application. Claim 22 has been finally rejected and is the subject of this appeal.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 22 is rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim(s) recites/recite the following means (or step) plus function limitation: “first program instruction means for building a map of components of activities” ; “second program instruction means for filtering said map of components to form a two dimensional heat map of selected components”; “third program instruction means for defining attributes for said selected components, based on a competency lens, said competency lens including competency offerings of business strategy, information technology strategy, organizational strategy, and operations strategy”; “fourth program instruction means for identifying collaborations including patterns to be applied to said selected components to model how said selected components collaborate”; “fifth program instruction means for building a three dimensional business component solution stack using said heat map, said attributes, and said collaborations”; “sixth program instruction means for developing quick hits and investment opportunities from said solution stack”; “seventh program instruction means for defining a roadmap of tasks for implementing said quick hits and

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investment opportunities”; and eighth program instruction means for implementing said roadmap for said business”.

3. This limitation invokes 35 USC § 112, ¶ 6 because it meets the 3-prong analysis set forth in MPEP 2181 as it recites the phrase “means for” or “step for” (or appellant identifies the limitation as a means (or step) plus function limitation in the appeal brief) and the phrase is modified by functional language and it is not modified by sufficient structure, material, or acts for performing the recited function. Also see *Altiris Inc. v. Semantec Corp.*, 318 F.3d 1363, 1375 (Fed. Cir. 2003). 35 USC § 112, ¶ 6, requires such claim to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. “If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112.” *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer. *Aristocrat Technologies, Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer.

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WMS Gaming, Inc. v. International Game Technology, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function. *Aristocrat*, 521 F.3d at 1338, 86 USPQ2d at 1242.

4. In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function: Specification pages 11-20.
5. However, the specification and drawings do not disclose sufficient corresponding structure, material or acts for performing the claimed function. Claim 22 includes limitation for: “first program instruction means for building a map of components of activities” ; “second program instruction means for filtering said map of components to form a two dimensional heat map of selected components”; “third program instruction means for defining attributes for said selected components, based on a competency lens, said competency lens including competency offerings of business strategy, information technology strategy, organizational strategy, and operations strategy”; “fourth program instruction means for identifying collaborations including patterns to be applied to said selected components to model how said selected components collaborate”; “fifth program instruction means for building a three dimensional business component solution stack using said heat map, said attributes, and said collaborations”; “sixth program instruction means for developing quick hits and investment opportunities

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from said solution stack”; “seventh program instruction means for defining a roadmap of tasks for implementing said quick hits and investment opportunities”; and eighth program instruction means for implementing said roadmap for said business”. The Specification does not set forth any software instructions or algorithms for performing these respective functions. As such, the Appellants have failed to adequately describe sufficient structure for performing the functions claimed.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2003/0167198 A1 NORTHCOTT ET AL 9-2003

US 2004/0117234 A1 LINDSAY-SCOTT ET AL 6-2004

American Cybernetic Corporation – 2001

(http://web.archive.org/web/20011214072250/http://www.amcybernetic.com/orgdev_overview.html)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

New Grounds-Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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2. Claim 22 is rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim(s) recites/recite the following means (or step) plus function limitation: “first program instruction means for building a map of components of activities” ; “second program instruction means for filtering said map of components to form a two dimensional heat map of selected components”; “third program instruction means for defining attributes for said selected components, based on a competency lens, said competency lens including competency offerings of business strategy, information technology strategy, organizational strategy, and operations strategy”; “fourth program instruction means for identifying collaborations including patterns to be applied to said selected components to model how said selected components collaborate”; “fifth program instruction means for building a three dimensional business component solution stack using said heat map, said attributes, and said collaborations”; “sixth program instruction means for developing quick hits and investment opportunities from said solution stack”; “seventh program instruction means for defining a roadmap of tasks for implementing said quick hits and investment opportunities”; and eighth program instruction means for implementing said roadmap for said business”.
3. This limitation invokes 35 USC § 112, ¶ 6 because it meets the 3-prong analysis set forth in MPEP 2181 as it recites the phrase “means for” or “step for” (or appellant identifies the limitation as a means (or step) plus function limitation in

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the appeal brief) and the phrase is modified by functional language and it is not modified by sufficient structure, material, or acts for performing the recited function. Also see *Altiris Inc. v. Semantec Corp.*, 318 F.3d 1363, 1375 (Fed. Cir. 2003). 35 USC § 112, ¶ 6, requires such claim to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. “If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112.” *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer. *Aristocrat Technologies, Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function. *Aristocrat*, 521 F.3d at 1338, 86 USPQ2d at 1242.

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4. In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function: Specification pages 11-20.
5. However, the specification and drawings do not disclose sufficient corresponding structure, material or acts for performing the claimed function. Claim 22 includes limitation for: “first program instruction means for building a map of components of activities” ; “second program instruction means for filtering said map of components to form a two dimensional heat map of selected components”; “third program instruction means for defining attributes for said selected components, based on a competency lens, said competency lens including competency offerings of business strategy, information technology strategy, organizational strategy, and operations strategy”; “fourth program instruction means for identifying collaborations including patterns to be applied to said selected components to model how said selected components collaborate”; “fifth program instruction means for building a three dimensional business component solution stack using said heat map, said attributes, and said collaborations”; “sixth program instruction means for developing quick hits and investment opportunities from said solution stack”; “seventh program instruction means for defining a roadmap of tasks for implementing said quick hits and investment opportunities”; and eighth program instruction means for implementing said roadmap for said business”. The Specification does not set forth any software instructions or algorithms for performing these respective functions. As such, the Appellants

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have failed to adequately describe sufficient structure for performing the functions claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Northcott et al., (US 2003/0167198 A1) hereinafter "Northcott" in view of American Cybernetic Corporation - 2001 (http://web.archive.org/web/20011214072250/http://www.amcybernetic.com/orgdev_ev_overview.html) further in view of Lindsay-Scott et al., (US 2004/0117234 A1) hereinafter "Lindsay-Scott".

Claim 22:

Northcott as shown discloses a method and computer product program to identify potential business opportunities, the method and computer product program comprising:

- *a computer readable medium and wherein all said program instruction means are recorded on said medium* (page 12, ¶ 0148: which teaches that "[t]he various processing modules may be

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implemented, in part, in a computer program product tangibly embodied in a machine-readable storage device for execution by a computer processor”);

- *first program instruction means for building a map of components of activities* (page 1, ¶ 0008: “...the step of generating a map of a process for addressing the identified target customer” (e.g., client “need state comprises identifying a representative process currently addressing the identified target customer need state and generating a map for the representative process”, which teaches that a map is generated representing a process (e.g., a map of components of activities));
- *second program instructions means for filtering said map of components to form a two dimensional heat map of selected components* (page 1, ¶ 0008: “[t]he step of identifying a potential point of intervention may comprise selecting” (e.g., filtering) “a potential target task from the tasks” (e.g., a map of components of activities) in the representative process map based at least in part upon one or more of the estimated unit cost values, incidence rates, total costs, and outcomes. The potential target task may be mapped into a network of one or more sub-tasks.” Northcott teaches a selection of a potential target task based at least in part from one or more of the estimated unit cost values, incidence rates, total costs

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and outcomes (e.g., variables, values) in order to create a two dimensional heat map from the representative process map (e.g. map of components));

- *third program instructions means for defining attributes for said selected components, based on a competency lens*, (page 1, ¶ 0008: “[t]he potential target task may be mapped into a network of one or more subtask”, by mapping the tasks of the potential target its attributes are defined. It is implicitly disclosed that the mapping is based on a competency lens since in order to be able to map it is necessary to be able to determined some sort of client/business evaluation criteria.);

Northcott teaches that “[d]uring the selection process (step 28), a subset of potential target customer need states may be selected and a respective set of one or more tasks (or procedures) may be associated” (e.g., defining attributes) “with each of the potential target customer need states” (e.g., based on a competency lens) (Northcott, ¶ 0036). Northcott does not specifically teach *said competency lens including competency offering of business strategy, information technology strategy, organizational strategy, and operations strategy*. However, American Cybernetic Corporation in an analogous art of business management for the purpose of competencies offering of business, information, organizational and operations strategies (pages 1-2, 7th ¶) as shown does:

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- *said competency lens including competency offering of business strategy, information technology strategy, organizational strategy, and operations strategy (pages 1-2, 7th ¶, which American Cybernetic Corporation teaches competency offering of business strategy (i.e., Organizational Strategy), information technology strategy (i.e., IT strategy), organizational strategy (i.e., Organizational Strategy) and operations strategy (i.e., Operations strategy));*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include competency offering of business strategy, information technology strategy, organizational strategy and operation strategy as taught by American Cybernetic Corporation, to improve Northcott, thereby giving the predictable result of analyzing "organizational change in manageable, related areas" (American Cybernetic Corporation, page 1, 6th ¶).

Northcott disclose:

- *seventh program instruction means for defining a roadmap of tasks for implementing said quick hits and investment opportunities (page 1, ¶ 0008: "[a] list of one or more projected customer needs may be generated based at least in part upon the projected customer problem list. The step of generating the projected customer needs list may comprise identifying customer needs that correspond to business opportunities for reducing cost or improving outcomes, or both" and "the step of generating the projected customer needs list*

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may comprise identifying customer needs associated with specific tasks and focused on reducing cost or improving outcomes, or both” which teaches that in order to implement the projected customer needs, a list of task is generated (e.g., client business roadmap of tasks));

Northcott does not disclose the following limitation, however Lindsay-Scott in an analogous art of managing business operations for the purpose of identifying business critical information (page 1, ¶ 0008) as shown, does:

- *fourth program instructions means for identifying collaborations including patterns to be applied to said selected components to model how said selected components collaborate* (page 3, ¶ 0026 and 0029: which Lindsay-Scott teaches that “[t]he CMA differs from traditional business consulting in that it investigates the applicability of collaborative commerce processes and technology,” (e.g., identify collaborations) “performs a knowledge management assessment of cultural behaviors and draws on behavioral science (e.g., including patterns to be applied to said selected components) “for establishing better work practices” (e.g., to model how said selected components collaborate). Further “the CMA analyzes the role and flow of the business critical information and their associated transactions within the major value chain processes across organizational groups within the organization to develop a set of modifications to the major value

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chain processes for achieving an optimized flow”, which teaches that analyzing the role and flow of the business critical information across the organization, any conflict between departments are analyzed, then collaborations are identified in order to accomplish a determined heat map without complications.);

- *fifth program instructions means for building a three dimensional business component solution stack using said heat map, said attributes, and said collaborations* (page 2, ¶ 0021: “[t]he Business Case development component service calculates paybacks and benefits” (e.g., variables, values) “by reviewing the current situation and identifying performance gaps. Metrics are selected and solutions” (e.g., a plurality of solution stacks) “are identified in terms of business processes and technical components and a vision is developed of the future business context”, which teaches that a plurality of solutions stacks are identified based on the business’ future vision, where “the solution will work in a business context, risk management and an implementation plan” (e.g., three dimensions));
- *six program instruction means for developing quick hits and investment opportunities from said solution stack* (page 2, ¶ 0019: “The Content Strategy development component service is used to identify, prioritize and manage content-related initiatives--highlighting opportunities, summarizing benefits and planning project

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implementation”, which teaches that this component identify opportunities, since it is implicitly disclosed that opportunities can be short or long term projects depending of the business’ need);

- *and eighth program instruction means for implementing said roadmap for said business* (page 2, ¶ 0019: “[0019] The Content Strategy development component service is used to identify, prioritize and manage content-related initiatives--highlighting opportunities, summarizing benefits and planning project implementation. The Content Strategy service helps clients to identify and manage a program of content-related initiatives across their organization, including the business case, prioritization and implementation planning” which teaches that the Content Strategy development component service is use to implement the planning project, since it is implicitly disclosed that in order to implement a project, a detailed plan must be determined);

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the identifying potential business opportunities method of Northcott and the strategic analysis of American Cybernetic Corporation with the system and method for content management assessment as taught by Lindsay-Scott because “the system and method for CMA can provide customer benefits such as: identifying solutions and an action plan for: reducing time to market; faster and higher quality customer responses; lower

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transaction costs due to improved communication; more relevant, timely and accurate information; more repurposing of flexible content through inter-system communication; information sharing at lower cost; multi-sourced information personalized through a single access point; conformance information as a product of normal business processes.” (Lindsay-Scott, page 4, ¶ 0030).

(10) Response to Argument

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In the Appeal Brief, Appellant presents the following arguments:

- 1) Northcott's maps are not the same as Appellant's maps.
- 2) That Northcott's does not describe the filtering step and he does not describe selecting a plurality of target tasks and therefore does not map a plurality of target tasks into a heat map of selected components; Northcott does not describe filtering said map of components to form a two dimensional heat map of selected components.
- 3) That a two dimensional map of objects, components, or anything must clearly have at least three elements. If less than three, then the map is obviously one dimensional.
- 4) That Northcott in combination with American Cybernetics does not describe or suggest a competency line including competency offerings of business strategy, information technology strategy, organizational strategy, and operations strategy and there is no description or suggestion even when combined with Northcott, that these analyses involve competency offerings.
- 5) That Northcott in combination with Lindsay-Scott does not teach identifying collaborations, including patterns to be applied to the selected components to model how the selected components collaborate.

In response to argument 1, Examiner respectfully disagrees. Northcott in ¶ 0008: teaches "...the step of generating a map of a process for addressing the

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identified target customer need state comprises identifying a representative process currently addressing the identified target customer need state and generating a map for the representative process”, which teaches that a map is generated representing a process (e.g., a map of components of activities). Further, in response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., a map of group of activities) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to argument 2, Examiner respectfully disagrees. Northcott teaches “[t]he step of identifying a potential point of intervention may comprise selecting (e.g., filtering) “a potential target task from the tasks” (e.g., a map of components of activities) “in the representative process map based at least in part upon one or more of the estimated unit cost values, incidence rates, total costs, and outcomes. The potential target task may be mapped into a network of one or more sub-tasks.” Northcott teaches a selection of a potential target task based at least in part from one or more of the estimated unit cost values, incidence rates, total costs and outcomes (e.g., variables, values) in order to create a two dimensional heat map from the representative process map (e.g. map of components) (Northcott, page 1, ¶ 0008). Further, in response to Appellant's argument that the references fail to show certain features of Appellant's

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invention, it is noted that the features upon which Appellant relies (i.e., selecting a plurality of target tasks; map a plurality of target tasks into a heat map of selected components) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to argument 3, Examiner respectfully disagrees. Appellant is intending to redefine the commonly known definition of a two dimensional to mean something that requires three variables when it is commonly known and widely accepted that a two dimension requires only two variables (e.g., x-axis and y-axis in a Cartesian map). Further, in response to Appellant's argument that the references fail to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., Appellant's two dimensional map requires at least three elements) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to argument 4, Examiner respectfully disagrees. American Cybernetic Corporation teaches in pages 1-2, 7th ¶ competency offering of business strategy (i.e., Organizational Strategy which defines the organization's core competencies and competitive advantage i.e., a business's strategy), information technology strategy (i.e., IT strategy), organizational strategy (i.e.,

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Organizational Strategy) and operations strategy (i.e., Operations strategy). Further, American Cybernetic Corporation teaches that “it is best to analyze organizational change in manageable, related area” therefore, describe five type on analysis to cover all the possibilities, wherein in each area an analysis and evaluation is described in each area in order to involve competency offerings of each strategy e.g., competition, competitive advantages for business strategy, resources, value added for operations strategy, budget, IT improvement, IT resources for IT strategy, efficiency, organization goal, people/policies/processes and IT alignment for organizational strategy.

In response to argument 5, Examiner respectfully disagrees. Lindsay-Scott teaches in page 3, ¶ 0026 and 0029 that “[t]he CMA differs from traditional business consulting in that it investigates the applicability of collaborative commerce processes and technology,” (e.g., identify collaborations) “performs a knowledge management assessment of cultural behaviors and draws on behavioral science (e.g., including patterns to be applied to said selected components) “for establishing better work practices” (e.g., to model how said selected components collaborate). Further “the CMA analyzes the role and flow of the business critical information and their associated transactions within the major value chain processes across organizational groups within the organization to develop a set of modifications to the major value chain processes for achieving an optimized flow”, which teaches that analyzing the role and flow of the business critical information across the organization, any conflict between

departments are analyzed, then collaborations are identified in order to accomplish a determined heat map without complications.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be

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treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Nadja Chong/

Examiner, Art Unit 3623

/Beth V. Boswell/

Supervisory Patent Examiner, Art Unit 3623

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Wynn W. Coggins/

Director, TC 3600

Conferees:

/Beth V. Boswell/

Supervisory Patent Examiner, Art Unit 3623

Vincent Millin/vm/

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Appeals Conference Specialist, TC 3600